

Zeeshan (Migration) [2023] AATA 492 (24 February 2023)

- 1.
- 2.
- 3.

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Muhammad Zeeshan
REPRESENTATIVE:	Mr Manoj Kumar Nanda (MARN: 1568823)
CASE NUMBER:	2112207
HOME AFFAIRS REFERENCE(S):	BCC2020/2328027
MEMBER:	Jennifer Cripps Watts
DATE:	24 February 2023
PLACE OF DECISION:	Canberra
DECISION:	The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Statement made on 24 February 2023 at 12:24pm

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus document provided with application – access to funds – certificate showing deposit by father in bank in home country – departmental checks identified bank as ‘ghost bank’ – evidence provided to establish existence and legitimacy of bank – father’s funds later deposited with another bank – applicant had almost enough funds in Australian account, after paying college fees – advised by agent that statement from bank in home county better than an Australian one – certificate provided cannot be replaced by a different one – amount in Australian account not material to issue of bogus document – discretion to waive requirements – no compassionate or compelling circumstances – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 5(1)(b), 57, 65, 359A, 375A(2)(b)
Migration Regulations 1994 (Cth), Schedule 2, cl 500.217, Schedule 4, cl 4020(1)*

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 23 August 2021 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicant applied for the visa on 18 September 2020. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.217 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because he did not satisfy Public Interest Criteria (PIC) 4020.
6. On 12 September 2021 the applicant applied for review of the decision to refuse his visa and provided the Tribunal with a copy of the primary decision record. He did not nominate a representative or authorised recipient in the review application. The applicant appeared before the Tribunal on 15 February 2022 to give evidence and present arguments. Post-hearing, on 28 February 2022, the applicant appointed Mr Nanda as his representative.
7. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.217 for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
9. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

10. The applicant's visa was refused because the delegate found that the applicant had given a bogus document (as defined in s 5(1) of the Act) and that he did not therefore meet PIC 4020 for the reasons given in the primary decision record, a copy of which was provided to the Tribunal by the applicant. The Tribunal is considering the same substantive issue on review.
11. The term 'bogus document' is defined in s 5(1) of the Act:
 12. **bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
 13. (a) purports to have been, but was not, issued in respect of the person; or
 14. (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 15. (c) was obtained because of a false or misleading statement, whether or not made knowingly.
16. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document, or information that is false or misleading in a material particular, because of information given by the applicant: PIC 4020(3). It also applies whether or not the document, or information, was provided by the applicant knowingly or unwittingly.
17. There is a distinction between evidence of giving 'information that is false or misleading in a material particular' and evidence of the giving of a 'bogus document'; the issue on review in the applicant's case is about giving of a bogus document. While PIC 4020 implies the need for 'probative evidence', PIC 4020 only requires evidence that a bogus document has been submitted, not that a document that has been submitted is bogus. Therefore, if a document which is found to be bogus under the 'relatively undemanding test' of 'reasonable suspicion' has been submitted in connection with a visa application, no more is needed to show that there is 'evidence' of the sort referred to in cl 4020(1).
18. The applicant is from Pakistan. The student visa application that is the subject of this review was lodged online, on 18 September 2020. In the online form, Dahal Dikchya, a registered migration agent with Expert Education and Visa Services, was nominated as the applicant's authorised recipient to receive written correspondence on his behalf. At page 9 of the visa application, the applicant includes that a 'parent' will provide funding for his stay by deposit of AUD37,180 in a financial institution, Invest Capital Investment Bank Ltd (ICIBL).
19. On the same day the online visa application was generated, 18 September 2020, evidence of funding for the applicant's stay was uploaded to the visa application; a document which the Tribunal describes as follows:
 20. An Account Maintenance Certificate dated 17 September 2020 with a balance of Rs.4,500,000/- as at 17 September 2020, account number ending 01267, purportedly issued by Invest Capital Investment Bank Limited, Head Office: 2-H, Gulberg II, Lahore, Tel: (92 42) 35777285-86, in the name of the financial sponsor, Muhammad Riaz, the applicant's father and (the AMC)
21. The AMC was accompanied by a statement from the applicant's father, Muhammad Riaz, signed and dated 18 September 2020, which includes the guarantee that he will provide AUD37,000 in financial support to his son, the applicant, and that 'the Applicant will have full access to these funds to pay for their course fees, education, maintenance and other expenses incurred by the Applicant in Australia and the cost of the Applicant's travel and

from Australia'. Mr Riaz refers to his enclosing 'certified copies of evidence of money deposit with a financial institution totalling the amount of financial support'.

22.

23. The Department's natural justice letter sent under s 57 of the Act (the natural justice letter)

24. During assessment of the visa application, on 22 June 2021 the applicant was sent a natural justice letter relating to what is described as 'unfavourable information'. The applicant was informed, in summary, that a Departmental Officer had conducted checks in February 2021 to confirm the information in the AMC and that they had 'serious concerns' that the applicant had provided a bogus document relating to the visa application. The applicant was informed that it was concluded from the investigation:

- that there are no bank offices located at the address mentioned on the Account Maintenance Certificate;
- the telephone number, as declared on the Account Maintenance Certificate, is registered with the Pakistan Telecommunication Company, it is not listed to ICIBL but rather to another business; and
- ICIBL does not operate as a genuine bank for financial purposes

25. The applicant was invited to respond to or comment on the concerns that were put in writing within 28 days of receipt of the natural justice letter. It was included that the applicant may not meet PIC 4020(1) because of evidence appearing to suggest he had provided a bogus document in relation to the visa application. The AMC is identified in the natural justice letter as the suspected bogus document.

26. The applicant responded to the natural justice letter in writing on 20 and 21 July 2021 and includes in his typewritten statement the following:

- He seeks to 'establish the existence of the bank before justifying the address and phone number issues', and refers to his
 - Annexure A, ICIBL's official website
 - Annexure B, ICIBL mid-year Financial Report
 - Annexure C, ICIBL's Pakistan Stock Exchange (PSX) registration
 - Annexure D, Wall Street Journal stock quote for ICIBL for 15 July 2021
 - request for an extension of time so he can provide more information
- A typewritten statement signed by Muhammad Riaz stating that he 'had funds in investment bank (ICIBL), I've liquidated all bonds and deposited into commercial, Bank Al-Habib'
- Bank AL Habib Limited 'Online Statement of Account' dated 17 August 2021 in the name of Muhammad Riaz showing three deposits into an AL Habib Month Saver account; the first appears to be an interbranch transfer (displaying the abbreviated code INTBRAN RECDP CR) on 16 August 2021 for Rs.1,300,000; the second and third are cash deposits made on 16 August 2021 for Rs.1,700,000 and Rs.1,000,000.

27. The review application and Non-Disclosure Certificate (NDC) issued under s 375A of the Act

28. The applicant's visa was refused on 23 August 2021. On 6 January 2022, a NDC was uploaded to the Tribunal's copy of the electronic Department file relating to copies of two Departmental investigative reports, into ICIBL and Trust Bank Investment Bank Limited in Pakistan.
29. The Tribunal considered the NDC and was of the view that its obligations under s 359A of the Act were engaged. A letter was sent to the applicant informing him of adverse information (the s 359A letter), with a copy of the NDC attached. The information was particularised and the applicant informed of the consequences of the Tribunal relying on the information.
30. The NDC was issued under s 375A of the Act which, in summary, covers information that is not to be disclosed to anyone but the Tribunal for reasons of public interest. It is a requirement, pursuant to s 375A(2)(b) of the Act, that the Tribunal, having been given the document or information, 'must do all things necessary' to ensure it is not disclosed to any other person. However, the Tribunal may provide an applicant with the gist, or essence, of the information that is the subject of the NDC.
31. The NDC specifies TRIM file numbers on the Department file. The Tribunal is satisfied that the copy of this NDC is dated 6 January 2022 and electronically signed, and that the signature is verified by a Delegate of the Minister for Home Affairs and Delegate of the Secretary of the Department of Home Affairs (position number included). The reasons why it would not be in the public interest to disclose the information are included in the NDC, as follows:

32. *'These documents contain information reports related to the detection of, and investigation into, entities engaged in suspected widespread finance fraud in Pakistan. The reports contain information shared by a foreign country (United Kingdom) and details investigative methods. Further disclosure beyond the tribunal, would not be in the public interest as it would reveal investigative methods, the identities of personnel who have not consented to further disclosure, and information sharing arrangements with a foreign country.'*

33. The Tribunal considered the information in the report, relating to Departmental investigations into ICIBL in this case, and the information disclosed in the Department's natural justice letter and thought it necessary, as a matter of fairness to the applicant, to disclose additional and more detailed information than the Department had, for the applicant to comment on. The Tribunal sent the s 359A letter to the applicant on 13 January 2022, which included the following adverse information:

34. *'The particulars of the information are:*

35. *The Department has placed on your visa application file a non-disclosure certificate, relating to investigative reports into the Invest Capital Investment Bank (ICIBL). The certificate was issued by a delegate of the Minister for Immigration on 6 January 2022 under s 375A of the Migration Act 1958 (the Act). A copy of the s.375A certificate is attached and you are invited to comment on the validity of the certificate. The Tribunal is of the view that the certificate is legally valid.*

36. *Your visa was refused because you did not meet the Public Interest Criteria 4020 (PIC 4020). This was because a statement you provided in support of your*

student visa application, that is the subject of this review, was found to be a bogus document. The relevant one page document that you provided, which is on the Department file, is:

- *Account Maintenance Certificate from Invest Capital Investment Bank (ICIBL) located at 2-H, Gulberg-II, Lahore, Telephone Number: (92 42) 35777285-86, issued on 17 September 2020, in the name of Mr Muhammad Riaz.*

37. The Account Maintenance Certificate from ICIBL (the statement), Department Doc ID: 8870875, provided by you in support of the visa application on 18 September 2020, is attached for your ease of reference.

38. A delegate of the Minister for Home Affairs has certified, in accordance with s.375A of the Act, that the disclosure of the specified TRIM reference numbers for file number ADD2021/6458809 & ADD2021/6458791, other than to the Administrative Appeals Tribunal (AAT), would be contrary to the public interest because it would reveal investigative methods, identities of personnel who have not consented to further disclosure, and to information sharing arrangements with a foreign country. These documents relate to the investigation into ICIBL.

39. The AAT must do all that is necessary to ensure the documents or information are not disclosed to anyone other than a member of the AAT. We may, however, provide you with the gist of the information, which we have chosen to do in your case, as follows:

- a) In early 2021, the ICIBL was identified as a bank of concern in the Pakistan student visa caseload and an investigation was undertaken relating to a large number of student visa applications with the statement of funds provided by ICIBL.*
- b) Through the investigation, it is reported;*
 - a. ICIBL has been identified as a 'ghost' bank*
 - b. ICIBL has provided statements, to students from Pakistan applying for an Australia student visa, of funds that do not exist or do not belong to the student visa applicant or their financial sponsors*
 - c. The arrangements were made by a third party, for payment of a fee.*
 - d. The student visa applicants were referred to or put in touch with the third party by the head office verification officer at ICIBL*
- c) The statement given by you to the Minister, in support of your subclass 500 student visa application made on 18 September 2020, contains features that were identified in the investigation as common in documentation issued by ICIBL. In particular, the bank statement you provided lists a single large credit to the account, and no other transactions.*

40. This information is relevant because you provided the statement as evidence of your having access to sufficient funds to support yourself during your stay in Australia, relating to the subclass 500 student visa application you lodged on 18 September 2020.

41. If the Tribunal relies on the above information relating to the investigation into ICIBL that is included in the documents with the folio numbers specified in the s.375A nondisclosure certificate, the Tribunal may reasonably suspect that the statement you provided in relation to a person is a bogus document, as defined in s.5(1) of the Migration Act 1954, because it is counterfeit or has been altered by a person who does not have authority to do so. In which case, you would not meet public interest criterion 4020(1). This would be the reason, or a part of the reason, for affirming the decision that is under review.

42. *You are invited to give comments on or respond to the above information in writing.*

43. *Your comments or response should be received by **3 February 2022.***

44. On 8 February 2022, the applicant responded by email, with attachments:

- His typewritten statement which includes relevantly:
 - He has already provided 'the proof of the existence of the ICIBL'
 - The applicant provided a statement of balance from an Australian bank, NAB, when he made the visa application that showed a balance of AUD26,137 instead of AUD32,000 'due to some problem'
 - The applicant contacted NAB and they said that the problem would be fixed by the end of the day, that is, the account would reflect a balance of AUD32,000; the applicant told his 'educational consultant' who advised him to wait until the end of the day, but then changed her mind and said that the applicant needed to obtain a statement so she could apply for his visa by the end of 'her working day', even though he told her that he still had more time to apply
 - The applicant contacted his father and his father provided the applicant with 'his investment banking statement due to this last-minute call'
 - When the applicant received the AMC from his father, he forwarded it to the educational agent
 - After receiving the natural justice letter, the applicant's educational consultant told him that she had not uploaded his NAB statement to the application
 - That the education consultant 'did not allow' the applicant to submit a response with this information and made him change it and wanted him to upload a new bank statement from 'a commercial bank'
- An email to the applicant dated 18 September 2020 from Simran Sodhi of Expert Education requesting, among other documents, that the applicant provide evidence of 'financial capacity'
- An email dated 6 July 2021 from Simran Sodhi (the education consultant) confirming they attached 'the Bank Certificate of your father' and that it was 'sufficient' for his visa application; that if the applicant is confident that the document is 'genuine', he should prepare a 'statement and relevant documents' and send it to them so they 'can proceed accordingly'
- Duplicate copies of the applicant's typewritten response to the Department's natural justice letter and the attachments
- The applicant's Australian NAB statement dated 18 September 2020 showing an available and current balance of AUD26,137.09, referred to above
- An email dated 18 September from the applicant to Simran Sodhi advising that he has \$32,000 in his personal account but that it is only showing \$26,000 (referring to the NAB statement above); the Pakistan government

has 'capped dollar transaction limit to \$10,000 per day and, for this reason, it will take time for the extra funds (to make the balance up to \$32,000) will 'take some time'

45. The Tribunal hearing on 15 February 2022

46. At the start of the hearing, the Tribunal went through the PIC 4020 requirements and explained that the substantive issue on which his visa was refused was the same issue the Tribunal would be considering on the review; whether the applicant had given, or caused to be given, to the Minister a bogus document as it is defined in s 5(1) of the Act in relation to the visa application.
47. The applicant was then directed to the matter of the s 359A letter and asked whether he had received it. The applicant had provided documents prior to the hearing, but not a response specifically addressing the adverse information that had been put to him in writing on 20 January 2022. The Tribunal is mindful that the applicant had been sent an *invitation* to comment or respond, and that comment or response is not compulsory. However, the applicant was, at the time, unrepresented, and the Tribunal wanted to be sure he had provided everything that he wished to in support of the application, including a response to the s 359A letter if he intended to do so. The applicant at first said he had not received the s 359A letter and checked his email inbox and junk folder. The Tribunal, referring to the electronic case system, told the applicant that the s 359A letter and attachments had been sent to his nominated email address on 20 January 2022, which was the same email address that the hearing invitation and acknowledgment of his application had been sent to. Shortly after, the applicant confirmed he had received the s 359A letter.
48. At the Tribunal hearing the applicant explained his circumstances in much the same way that he already had, in response to the Department's natural justice letter, referring to having money in his NAB account of around \$26,000. The applicant said that the reason he did not have evidence of the \$32,000 required to fund his stay was because he had paid \$9,000 in college fees from the NAB account. The applicant, as he had mentioned previously in writing, said that his migration agent at the time of application had told him it was best not to provide an onshore financial statement, and better to provide one from offshore. The applicant agreed to obtain what is now referred to as the AMC to submit with the visa application. Simran Sodhi, who was the person the applicant was dealing with, left the migration agency before the decision to refuse his visa. The applicant said he started dealing with a different agent at Expert Education and Visa Services, who he says told him that what Simran Sodhi had said was not the case, that is, that an offshore financial statement is better than one issued in Australia. The Tribunal has considered this, as it seems to be that the applicant would have preferred to provide his own NAB statement and that he may have had time to wait for the additional funds to arrive in the NAB account before lodging the visa application. That said, there is no documentary evidence before the Tribunal that the applicant had \$32,000 or more in his NAB account at any before the visa application was lodged.
49. The applicant confirmed in his oral evidence that his father, Muhammad Riaz, provided him with the AMC; it is dated 17 September 2020. The applicant said that shortly after receiving the natural justice letter, his father 'liquidated' the bonds in the ICIBL account and put the funds into a different bank account with AL Habib Bank in Pakistan. An AL Habib Bank financial statement has been provided; it is dated
50. At the closing of the hearing, the applicant was reminded that he could have more time to provide a response to the matters raised in the s 359A letter sent to him on 20 January 2022. The applicant had been focused on the issues around the time of application, including providing the AMC, the dissatisfaction with the advice given to him by his former

migration agent and his father's provision of a new account maintenance certificate from AL Habib Bank. The Tribunal was concerned that the applicant did not really appear to have given much consideration to the information in the s 359A letter which related to the Department's investigation, as it was set out in the letter sent on 20 January 2022.

51. The hearing was on 15 February 2022 and, on 28 February 2022, Mr Nanda was appointed by the applicant. On 3 March 2022, Mr Nanda requested an extension of time 'to study the case and provide required information'. The request was granted and the applicant was notified in writing that the time within which he could provide comments or a response had been extended to 17 March 2022.

52. Post-hearing written submission

53. At the Tribunal hearing, the applicant was not represented. He had responded to the hearing invitation within the time specified for a response to the s 359A letter, but not specifically to the adverse information contained in the s 359A letter. In the circumstances, the applicant was told at the Tribunal hearing he could respond in writing to the adverse information in the s 359A letter up to 3 March 2022 and that the Tribunal would consider any additional information he provided before making its decision. As mentioned earlier, the applicant appointed Mr Nanda as his representative on 28 February, Mr Nanda requested an extension of time to provide comments to the adverse information which was granted and, on 17 March 2022, a written submission was received from Mr Nanda, on behalf of the applicant, in which he submits, in summary (the Tribunal has given each of the summarised responses a roman numeral and the Tribunal's consideration of each one is bullet pointed below):

- (i) They have provided evidence of the existence of ICIBL
 - The Tribunal has considered the documentary evidence provided and accepts that ICIBL exists.
- (ii) That the delegate 'did not elaborate particular documents' and that they 'made legal mistakes' in the decision.
 - The Tribunal does not accept, as it has been submitted, that the delegate did not elaborate about particular documents. It is unclear what the 'legal mistakes' referred to are but, in any event, the Tribunal is satisfied that it has fully considered documents that contain information relevant to the substantive issue on review. In the Department's natural justice letter, they quite clearly identified the AMC as a suspected bogus document and invited the applicant's comment on what they appear to have considered the related matters that were included in the natural justice letter. In any case, this is a de novo review. The Tribunal has considered relevant documents on the Department file, the additional documents that the applicant provided on the review and issues he raised about them at the Tribunal hearing. For example, the AMC, the NAB statement, the written communication he had with his former migration agent and the AL Habib Bank statement, the Wall Street Journal stock quote, evidence of ICIBL's official website, ICIBL's mid-year financial report and their registration on the PSX. The Tribunal, on review, has considered the documents and accepts that the information in them indicates that ICIBL is registered on the PSX. This also goes to the Tribunal's response to (i) above.
- (iii) The applicant 'did not refer to any of these documents during the course of giving evidence at the hearing'.

- The applicant referred to documents showing that he claimed to have the means to self-fund his stay, with reference to the NAB statement. The claim that the Department did not acknowledge 'the ethnicity' of documents submitted to the Department appears to be a reference to ICIBL being a legitimate bank. If this is also a reference to the documents showing that ICIBL is a publicly listed company and that it has a head office at the address in Lahore, the Tribunal has already accepted this to be the case.
- (iv) The applicant has not been granted procedural fairness and should be given a chance to 'further elaborate his innocence' and to 'provide documentation required to satisfy the criterion'
 - The criterion referred to is taken by the Tribunal to mean the evidence in relation to funding for the applicant's stay. The Tribunal accepts that the applicant had almost enough in his NAB account to show that he could self-fund his stay, but that his former migration agent did not upload the NAB statement to the visa application. The amount the applicant needed to demonstrate he had access to was \$32,000. The NAB statement had just over \$26,000 in it, so this would appear not to be evidence that he had the required funds. In any event, the AMC was uploaded to the visa application. Any financial document provided after the AMC has already been given to the Minister in relation to the visa application cannot not replace the AMC in circumstances where the Tribunal (on review) is satisfied the AMC has been given, or caused to be given, by the applicant. Essentially, the AMC has already been given, or caused to have been given; it cannot be 'ungiven' or swapped for a new financial statement for the purpose of meeting the criteria (PIC 4020).
 - Relating to the submissions that the applicant has not been granted procedural fairness, the applicant was sent a natural justice letter by the Department and responded to it, within a timeframe that was extended at his request. He was sent the s 359A letter by the Tribunal, and invited to appear at a hearing to give oral evidence and attended the hearing. The applicant, post-hearing, appointed an experienced and registered migration agent to assist him to provide additional comments or a response relating to the adverse information in the s 359A letter. The applicant's representative requested additional time to do so, and extra time was granted by the Tribunal. The Tribunal is satisfied that the applicant has been given ample opportunity to provide any evidence he wished to, orally and in writing, in support of his application. The submission that the applicant has not been granted procedural fairness is unfounded, in the view of the Tribunal.
- (v) Pakistan is a 'third world country' and has a 'fundamental flaw in its capacity to deal with pressure in Banking System' affecting their dealings with 'customers and government department responses which clearly in this case is visible and has affected strongly our Client's student visa application'
 - The Tribunal has considered the submission. It is accepted on the face of it that Pakistan's banking system is possibly not as robust or reliable as, for example, banking systems in other more developed economies. The findings from the investigative report are that an individual within ICIBL was arranging the financial certificates with a third party for payment of a fee. The Tribunal speculates this could occur in almost any bank, regardless of whether it is in a developing or first world country.

- (vi) The banking sector in Pakistan has many problems, including that most 'financial assets and deposits were owned by nationalized commercial banks which are bureaucratic, overstaffed, unprofitable and with poor customer service; a high ratio of non-performing loans; high tax rate of banks affecting profitability; middle and lower class having 'limited access to bank credit'; generally 'poor quality' all round, including 'weak internal controls'
- It is accepted these problems may be features of Pakistan's banking system. The submission does not directly reference ICIBL. However, it is reasonable to think that if there are such weak internal controls, it would not be difficult for an employee, for example in this case the head verifications officer, to arrange bogus documents and to provide them to a third party for payment of a fee, to pass on to an applicant for an Australian student visa to meet the financial criteria.
- (vii) Reference is made to the applicant's claim that on or about the day the visa application was lodged he was told by the bank that his NAB account would have the required \$32,000 in the account by the end of the day and subsequent conversation with the migration agent who told the applicant he should get an offshore account maintenance certificate. This is characterised as 'dependency on bank officer's communication which results in errors sometimes'
- It is accepted that there is correspondence from the education agent that she recommended the applicant obtain a financial statement from an offshore bank; that the applicant's NAB account had about \$26,000 in it on 20 September 2021. The AMC is dated 17 September 2020; the applicant's father obtained the AMC and provided it to the applicant; the applicant then gave it to the migration agent; and the migration agent uploaded the AMC to the visa application on Friday 18 September 2020. The Tribunal sees no link between this sequence of events and dependency on a bank officer's communication resulting in errors that would be materially relevant to the question of whether the AMC is a bogus document.
- The visa application was lodged on 18 September 2020 and, among other documents, the AMC was uploaded to the visa application on the same day. The applicant claims that he had money in his NAB account at this time, but not quite enough to meet the \$32,000 requirement. However, the only NAB statement that has been provided is dated 20 September 2020. Whether or not the applicant did or didn't have enough money in his NAB account is not directly material to the issue of whether the AMC is a bogus document. It is merely a matter that gives context to the applicant's explanation as to why he asked his father to provide a financial statement from Pakistan may give some context as to why the applicant obtained the AMC.
- (viii) ICIBL is a 'legit entity'
- The Tribunal accepts that ICIBL has a head office at the Lahore address and that it is registered on the PSX

54. In response to the natural justice letter, the applicant provided comments and information that satisfies the Tribunal that ICIBL head office in Lahore was, at the time the AMC was provided, at the address and listed with the same phone numbers as they appear on the AMC. The applicant provided a link to <https://www.icibl.com> in his submission. The Tribunal followed the link which shows that the head office of ICIBL is now, since August 202, at 131–

Z Zahidjee House, Scotch Corner, Upper Mall, Lahore, Pakistan and that the phone numbers are +92(42)35777285 and +92(42)35777286. On the PSX website, there is a letter from ICIBL informing the PSX that from 1 August 2022 ICIBL moved from Gulberg-II in Lahore to 131-A, Zahidjee House, Scotch Corner, Upper Mall, Lahore, retaining the same phone numbers, signed M. Naim Ashraf Company Secretary.

55. The Tribunal accepts that the applicant had around AUD26,000 in his NAB account when he lodged the visa application, and that the statement he provided to his former migration agent was not uploaded to the visa application by her. However, this does not alter the fact that the applicant provided the AMC. He does not deny he provided the AMC. The applicant has provided evidence that he questioned his former migration agent about whether the NAB statement had been uploaded to the visa application, but given that the full amount of funds was not showing in the NAB statement, it seems unlikely this would have satisfied the evidence of funding for the applicant's stay in relation to the visa application. In any event, it is clear on the evidence that, even though he is unhappy about the agent not uploading the NAB statement, the applicant authorised his appointed agent to upload the AMC. The applicant says his father obtained the AMC and that he gave it to the applicant and the applicant then gave the AMC to the migration agent, who then uploaded it to the visa application.
56. The AMC was identified within a cohort of financial statements issued by ICIBL, in circumstances described in the Tribunal's s 359A letter. The applicant claims his father closed the ICIBL account shown on the AMC and then deposited funds into an account with AL Habib Bank in Pakistan. The AMC and the AL Habib Bank financial statement were both provided by the applicant, at different times. The AL Habib Bank statement shows two cash deposits and a deposit that appears to be an interbank transfer; they total around the same amount that the applicant claims his father withdrew from ICIBL when his father liquidated his bonds. There is no verifiable evidence that actual funds were deposited into ICIBL, then withdrawn from ICIBL and deposited into the AL Habib Bank account. The lack of evidence of these claimed funds transfers remains a concern in circumstances where the ICIBL certificates showed accounts that had either no money in them or money that did not belong to either the applicant or financial sponsor.
57. The applicant's visa application was made on 18 September 2020. Included in the documents that accompanied the visa application was the AMC, dated 17 September 2020. The applicant was provided with adverse information relating to the AMC that engaged the Tribunal's obligations under s 359A of the Act. The matters, such that the Tribunal was able to disclose them, included that a large number of student visa applicants from Pakistan had provided a statement of funds obtained from ICIBL; the funds specified in the statements do not exist or do not belong to the student visa applicant or their financial sponsors; arrangements were made by the head office verification officer at ICIBL and a third party for payment of a fee; and that the statement given to the Minister in support of the visa application, the AMC, contains features in common with the documentation issued by ICIBL.
58. The Departmental Investigation Report into ICIBL includes sufficiently probative evidence for the Tribunal to be satisfied as to the veracity of the information contained in the report, in particular the adverse information that was put to the applicant in the s 359A letter.
59. At the time of application Muhammad Riaz's statement includes that the applicant will have 'full access' to the funds he is providing to fund the applicant's stay. There is no verifiable evidence that the funds shown on the AMC were in the ICIBL account, nor has any documentary evidence been provided to support the claim that funds were withdrawn from, or transferred out of, the account at any time to the applicant or anyone else.

60. The AMC was captured in the Departmental investigation into ICIBL being a bank of concern, where the head verification officer at ICIBL's head office, and a third party for payment of a fee, were arranging and providing ICIBL account maintenance certificates to student visa applicants from Pakistan where there were no funds in the account, or the funds did not belong to the student or financial sponsor.
61. Having carefully considered the applicant's evidence, and the information contained in the Department's investigative report into ICIBL, the Tribunal reasonably suspects that the AMC is a bogus document that is counterfeit or has been altered by a person who does not have authority to do so as it is described in s 5(1)(b) of the Act.
62. In the circumstances that the AMC was obtained and uploaded to the visa application, the Tribunal is satisfied that the applicant gave or caused the AMC, a bogus document, to be given to the Minister in relation to the visa application.
63. Therefore, the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) be waived?

64. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa.
65. For the following reasons, the Tribunal is not satisfied that the requirements should be waived.
66. The applicant has made no claim, nor is there any information before the Tribunal, that indicates in the applicant's case there are compassionate or compelling circumstances as they are described in PIC 4020(4). The applicant declared in the visa application that his parents and siblings live in Pakistan. The applicant declares no accompanying or non-accompanying family members in the visa application. With reference to the information provided by the applicant in his visa application and in other documents since he made the application, there is nothing to indicate that the applicant is a person in circumstances of a level that would affect the interests of Australia. He has a Bachelor of Electrical and Telecommunications Engineering degree from Pakistan and works in the retail sector in Australia. It is acknowledged, and the Tribunal accepts on the face of it, that the applicant has submitted he has always followed the rules, regulations and visa conditions which he has been in Australia and that he intends to continue to do so. The applicant has an obligation to comply with his visa conditions. The Tribunal does not consider this submission to be compelling.
67. In the applicant's case, the Tribunal is not satisfied there are compelling or compassionate circumstances as they are described in PIC 4020(4) that justify granting the visa.
68. Therefore the requirements of PIC 4020(1) should not be waived.

69. Conclusion

70. On the basis of the above, the applicant does not satisfy PIC 4020 for the purposes of cl 500.217.

DECISION

71. The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Jennifer Cripps Watts
Senior Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...